

Exhibit 11

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telephonic proceeding

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 ULKU ROWE,

4 Plaintiff,

New York, N.Y.

5 v.

19 Civ. 8655 (LGS)

6 GOOGLE, LLC,

7 Defendant.

8 -----x

9 May 14, 2020

10:48 a.m.

10 Before:

11 HON. LORNA G. SCHOFIELD,

12 District Judge

13
14 APPEARANCES

15
16 OUTTEN & GOLDEN, LLP
Attorneys for Plaintiff
17 BY: CARA GREENE

18
19 PAUL HASTINGS, LLP
Attorneys for Defendant
20 BY: KENNETH W. GAGE
BY: CAITLIN D. BROWN

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1 forward makes sense and Ms. Greene has proposed to us certain
2 parameters and we are in the process of trying to get our arms
3 wrapped around what that universe would look like and are
4 hoping would get that information soon so that we can share
5 some more information with opposing counsel to facilitate these
6 discussions.

7 THE COURT: Okay. That sounds good.

8 So let's move to the next issue which is -- let me
9 find the next issue -- complaints about discrimination.

10 So, I reject the defendant's position that the only
11 complaints that are relevant are complaints about the two
12 managers. I think that that is not consistent with the case
13 law, at least as I read it most. That doesn't mean, of course,
14 that other information and other complaints are necessarily
15 ultimately admissible but I think that they are within the
16 scope of proper scope of discovery. So the question is, as I
17 understand it, the plaintiff is looking for all of the
18 complaints about discrimination, meaning pay or promotion or
19 retaliation from Google's New York office in the last five
20 years.

21 Is that right?

22 MS. GREENE: Yes, your Honor.

23 THE COURT: Let me hear from the defendant. I am
24 rejecting your proposition that it should be limited to two.
25 If you want to make any remarks about the breadth of the

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1 request of the New York office in the last five years?

2 MR. GAGE: Sure, your Honor. Again, this is Ken Gage.

3 Part of the challenge here is Google has a robust
4 internal complaint process. People raise all sorts of issues
5 and part of the challenge would be in identifying what would
6 qualify as the type of complaint that the plaintiff is looking
7 for here in the first instance and then collecting all
8 responsive documents relating to that complaint or those
9 complaints thereafter. To say complaints of discrimination,
10 that doesn't really give us a precise way of finding things.
11 If an employee raises an internal complaint that her or his
12 boss didn't provide him or her with certain tools that they
13 needed, that arguably could be construed as a complaint of
14 discrimination so it is hard to --

15 THE COURT: Let me stop you right there.

16 I understand your concern. I think the plaintiff was
17 pretty precise. I understand that having precise principles is
18 one thing and applying them is another, but what I am going to
19 do is ask you to meet and confer about the scope of the
20 production and specifically how you will identify what is
21 responsive and not and then come back to me if there are any
22 remaining issues to be resolved. But, it sounds to me like you
23 need to talk to each other first.

24 But, in general, what I am ruling is that complaints
25 of gender discrimination specifically relating to pay or

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1 promotion or retaliation should be provided if they were
2 complaints within the New York office in the last five years.

3 The next issue I believe has to do with the ESI
4 searches. I am not exactly sure I understand what happened
5 here. It sounds to me like Google fashioned its word searches
6 and then also followed up with the various custodians but that
7 there was no agreement either as to search terms or custodians.
8 Is that right?

9 MS. BROWN: That's correct, your Honor. This is
10 Caitlin Brown on behalf of Google.

11 THE COURT: Okay. Let me hear from Google because
12 that seems -- well, I mean on the one hand I commend you for
13 trying to meet the discovery schedule and get this thing going.
14 On the other hand, I would just say you must have known that
15 there was some risk involved if the plaintiffs hadn't agreed to
16 the search terms and the custodians. On the other hand, I
17 would also say that the plaintiff is certainly within her right
18 to ask about that, although coming late given the schedule.

19 So, given all of that, what exactly is it that the
20 plaintiff -- I mean, as I understand it, the document retention
21 policy says there is only an 18-month retention period and in
22 this case there was, I presume, a discovery hold but that still
23 wouldn't change the fact that at least as of the date of the
24 hold there was only an 18-month retention period. So, what
25 exactly is it that the plaintiff needs that hasn't been

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1 produced that should be the subject of ESI?

2 MS. GREENE: Thank you, your Honor. This is Cara
3 Greene.

4 Just to step back for a moment, I think what happened
5 was because of the early discovery protocols people fashioned a
6 search, conducted that search before plaintiff's discovery
7 requests had even been served. In plaintiff's discovery
8 request there was a section specifically related to ESI that
9 requests that the parties meet and confer and come to an
10 agreement as to how ESI would be conducted, how ESI searches
11 would be conducted.

12 So, from the time we first served our discovery
13 request we asked for the opportunity to meet and confer and
14 come to an agreement. Since that time -- that was in
15 January -- we have repeatedly tried to engage on this issue and
16 didn't have the full information. It was only after we filed
17 our request with the Court that we were even provided with the
18 search terms that Google had run previously.

19 In assessing those search terms and compared to the
20 search terms that we had composed this is very, very little
21 overlap. The Google searches are very narrow in their scope,
22 they're very narrow in terms of their custodians. Just by way
23 of example, there is no search with respect to Diane Greene who
24 is someone who, at various points of time, was involved in
25 decisions related to Ms. Rowe. She is no longer with Google.